

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 3 offered by Mrs. MALONEY of New York:

Page 66, after line 3, insert the following new paragraph (and redesignate the subsequent paragraph accordingly):

“(2) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—A qualified mortgage (as defined in subsection (c)) may not contain terms under which a consumer must pay a prepayment penalty for paying all or part of the principal after the loan is consummated in excess of the following limitations:

“(A) During the 1-year period beginning on the date the loan is consummated, the prepayment penalty shall not exceed an amount equal to 3 percent of the outstanding balance on the loan.

“(B) During the 1-year period beginning after the period described in subparagraph (A), the prepayment penalty shall not exceed an amount equal to 2 percent of the outstanding balance on the loan.

“(C) During the 1-year period beginning after the 1-year period described in subparagraph (B), the prepayment penalty shall not exceed an amount equal to 1 percent of the outstanding balance on the loan.

“(D) After the end of the 3-year period beginning on the date the loan is consummated, no prepayment penalty may be imposed on a qualified mortgage.”.

Page 66, after line 11, insert the following new paragraph:

“(4) OPTION FOR NO PREPAYMENT PENALTY REQUIRED.—A creditor may not offer a consumer a residential mortgage loan product that has a prepayment penalty for paying all or part of the principal after the loan is consummated as a term of the loan without offering the consumer a residential mortgage loan product that does not have a prepayment penalty as a term of the loan.”.

The CHAIRMAN. Pursuant to House Resolution 825, the gentlewoman from New York (Mrs. MALONEY) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from New York.

Mrs. MALONEY of New York. Mr. Chairman, I yield myself 3 minutes.

This amendment, which I am offering with my good friend and colleague from New Jersey, ALBIO SIRES, addresses prepayment penalties and prime loans. This is a well-balanced amendment that has gained the support both of consumer groups and industry.

Prepayment penalties are designed to deter borrowers from refinancing, or just paying off their loans. This seems unfair; why should anyone be penalized for paying off their loans? Why should borrowers not be able to take advantage of a better offer if it becomes available? Isn't that how the free market system is supposed to work?

The underlying bill prohibits prepayment penalties on subprime loans and requires that prepayment penalties on prime loans expire 3 months before a loan resets. But I think we need to offer all borrowers, including prime borrowers, an alternative to loans with prepayment penalties. At the most, prepayment penalties should last 3 years, the time needed for lenders to recover their investment.

Mortgage lenders argue that prepayment penalties enable them to offer loans at lower interest rates because they are assured of income for a period of time. Our amendment just requires them to offer prime borrowers an informed choice. If a lender offers a borrower a loan with a prepayment penalty, they also have to offer that borrower a loan with no prepayment penalty.

Also, our amendment would limit the period of prepayment penalties to 3 years and limit the amount of the penalty to 3 percent of the outstanding balance in the first year, 2 percent in the second, and 1 percent in the third. This standard has already been adopted in many States and is often referred to as the “California standard.” It represents what reputable lenders consider best practices. Prepayment penalties beyond 3 years are simply unjustified by any market need.

This is a balanced amendment that gives lenders adequate security and the option to offer prime loans with prepayment penalties, but also gives prime borrowers a choice to avoid prepayment penalties if they so wish. It is a sensible and necessary step to improved disclosure and improved choice.

I urge my colleagues to support it.

Madam Chairman, I reserve the balance of my time.

Mr. FEENEY. Madam Chairman, I claim the time in opposition.

The Acting CHAIRMAN (Ms. KAPTUR). The gentleman from Florida is recognized for 5 minutes.

Mr. FEENEY. I appreciate the gentlelady's amendment. And I suppose I can't argue that it does a great deal of harm under the bill, because what the bill essentially does is it takes millions of potential homebuyers and makes them ineligible, as a practical matter, for loans. And so all we're doing is taking those million people that can't get loans and saying one more type of loan they can't get is a loan with a prepayment penalty that lasts longer than 3 years built in.

Having said that, assuming some potential homebuyers escape the penalties under this bill and they actually do qualify to get a loan that puts them in a house that they like and that's affordable, what the gentlelady's amendment does is to make the marginal interest rate they may have to pay higher.

As the gentlelady said, lenders have demonstrated, I think conclusively, that there are lower interest rates available at times if you have a prepayment penalty built in because they know that that loan is going to be out there for 15, 20 or 30 years putting a stream of money into the pocket of the lender. That's why they do the more attractive long-term interest rate.

Now, I happen to not like prepayment penalties. Most Americans move a lot. But there are Americans, for example, on a fixed income that are retired and have a pension and they know they're going to be in a house for

a long period of time and they don't mind a prepayment penalty.

What the gentlelady does is to take choices away from homeowners. By the way, I agree with the notion that we ought to have informed consent. There is nobody here arguing that we shouldn't inform consumers what the prepayment penalty is, what the consequences can be. What we are suggesting is that when you limit for 3 years the amount of the prepayment penalty, there are some homebuyers that otherwise would be able to get an attractive interest rate, buy the home of their dreams, stay in that home for 15 or 20 years and never pay the penalty that will never, ever get to move into that home because the gentlelady thought, in general, prepayment penalties are a bad idea for everybody. They are a bad idea for some people. If you move a lot, if you're going to have your circumstances changed, they can be a very bad idea. I negotiated a slightly higher interest rate because I do not have a prepayment penalty on my mortgage, but I think that individual free men and women, after they are informed, ought to be making these choices and not the Congress of the United States.

Again, I don't think this is a horrendous amendment because what the bill does is to say to millions of potential borrowers, as a practical matter, they will be ineligible going forward to get access to credit. But this makes a really bad bill marginally worse.

With that, Mr. Chairman, I yield back the balance of my time.

Mrs. MALONEY of New York. Mr. Chairman, I yield the remainder of my time to my colleague who has personal experience with prepayment penalty abuses.

The CHAIRMAN. The gentleman from New Jersey is recognized for 2½ minutes.

Mr. SIRES. I rise in support of this amendment. And this amendment, all it affords is a choice.

I want to thank Congresswoman MALONEY for her hard work and leadership on this issue, and I appreciate some of the concerns that I had on this amendment.

Let me just share a personal story. Before coming to Congress, I was part owner of a title insurance agency, and I have taken out a couple of mortgages in my time. It is fair to say that I had more knowledge about mortgages than the average consumer, and certainly more than a first-time home buyer. Yet, when I sold my home, I sold my home for the reason to come to Congress, I was shocked to learn that I owed \$7,500 as a prepayment penalty. The circumstances that I sold the home were the fact that I was elected to Congress, that I had to disassociate myself with the property. If I was surprised by this penalty, imagine how surprised someone with less experience and knowledge would be. That is why I strongly support this amendment. It